

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**June 7, 2017**

The meeting was called to order at 6:01 p.m. by Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Necia Christensen, Russell Moore, Scott Spendlove, and William Whetstone

**ABSENT**

Sandy Naegle

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Brenda Turnblom

**AUDIENCE**

Three people were in the audience.

**B-3-2017**  
**Dave Dominguez Variance**  
**Gates Avenue & 201 South Frontage Road**  
**M Zone**

**REQUEST**

Mr. Dave Dominguez is requesting a variance from the West Valley City Board of Adjustment. He is seeking a variance from Section 7-6-302 and 7-6-303(3)(a) of the West Valley City Code. These sections require that the minimum setback adjacent to a street be landscaped. The applicant is seeking an 8-foot variance along the 201 South Frontage Road and a 20-foot variance along Gates Avenue and the intersection of Gates Avenue and the 201 South Frontage Road.

**BACKGROUND**

The WEST VALLEY CITY GENERAL PLAN recommends light manufacturing uses.

The subject property is known as parcel number 14-22-304-006. This property was platted as a lot within the East Magna Plat A Subdivision. It is a challenging property to develop due to its configuration and relationship with 201 South Frontage Road and Gates Avenue. The property is .45 acres in size and was recently rezoned from the Agriculture zone to the Manufacturing zone.

Mr. Dominguez would like to use this site for a construction yard office and shop. A precast concrete wall is intended to be built along the north, west and south sides of the property. While discussing the potential use for this site, staff informed the applicant that any portion of the property that was adjacent to a street would need to have 20-feet of landscaping. Mr. Dominguez said that the amount of landscaping would make the remaining portion of the property very difficult to develop. However, he committed to landscape the site to meet the 20-foot area requirement provided the landscaping could be placed within the existing ROW. Staff thought that this was a reasonable approach, but that a variance would still need to be granted as the landscaping would not be located within the site itself.

The property is uniquely shaped having 3 sides of frontage on a dedicated street system. When the property was zoned for agricultural uses, the size of the property could have accommodated a single family dwelling and other accessory buildings typical of an agricultural use. However, as the property is zoned for light industrial uses, the amount of landscaping required along the street frontages does negatively impact the useable space for industrial type uses.

As mentioned earlier, Mr. Dominguez suggested using the existing ROW for the landscaping purposes. Although 12 feet on the north side of the property would be

located within the site itself, the remaining 3 sides would not have any internal landscaping.

Staff discussed this option with the City Engineer to see if they would have any issues regarding landscaping in the ROW. The City Engineer expressed little concern as he does not anticipate formal improvements in this area for the foreseeable future. The right-of-way along Gates Avenue is 66 feet. The City Engineer does not believe the City will need that much width as Gates Avenue is a dead end street. Therefore, a portion of the landscaping being installed by Mr. Dominguez would remain even if the City installed formal improvements.

The City Engineer also mentioned that this area of the City is void of any real drainage systems. He believes that the developer will be required to retain storm water on site. Having a larger area within the property will allow the developer a better opportunity to meet drainage requirements. Therefore a reduction in the 20-foot landscaping requirement would be positive for this purpose.

Should the Board of Adjustment find in favor of the variance request, the applicant will need to work with staff regarding this change as it relates to the conditional use process.

## **ORDINANCE SUMMARY**

Section 7-6-302 and 7-6-303(3)(a) of the West Valley City Code states that the minimum required setbacks adjacent to a street shall be permanently landscaped except for approved access drives.

The West Valley City Land Use Development and Management Act Section 7-12-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

The variance will not substantially affect the general plan and will not be contrary to the public interest.

The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

**Applicant:**

Dave Dominguez  
1358 Fairway Drive  
Washington, UT 84780

The Board discussed Dave Dominguez's responses to the five criteria for granting a variance for the record:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

The purpose for the City's zoning ordinances are to promote health, safety and welfare of the citizens. The approval of the variances will not negatively impact the purpose noted above. The unreasonable hardship is that due to the properties configuration, 41% of this property would be needed for landscaping. Eliminating nearly half of the useable space to meet the landscaping ordinance is most definitely a hardship. The City's standard ordinance for landscaping in the M zone is 5%.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

This property is fronted on 3 sides by a dedicated street. The intersection of Gates Avenue and the 201 South Frontage Road converge leaving a very elongated property. There are no other properties in this general area with that problem.

3. The variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

The substantial property right is that I be allowed to develop this property with a new light industrial use. The light industrial use is outlined in the City's General Plan. However, the size of this property and the configuration in addition to the landscaping requirement make locating an industrial use challenging.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

This area of the City lacks formal improvements. Aside from gutter on 201 frontage road, there is no curb, gutter, sidewalk or park strip in these areas. The City does

not anticipate these improvements anytime soon. I am however willing to comply with the general plan by landscaping the full 20-foot area along the street frontages.

5. The spirit of the zoning ordinance is observed and substantial justice done

The spirit of the zoning ordinance is observed because I am going to install the 20 feet of landscaping as required by ordinance. It's just that part of this landscaping will not be on my property. Even if the City does improve these roads, there will be areas of landscaping that will remain outside of the right of way.

**Public Comment:** Dave Dominguez said his property is oddly shaped with roads surrounding it. If he were to give up 40% of his property to landscaping, it would make his property useless. Dave Dominguez said he plans to install an 8' precast wall with an 20-24' electric gate on the property which will be a great improvement to the area.

Necia Christensen said Dave Dominguez did a good job preparing his case and closed the public portion of the hearing.

**Motion:** Russell Moore moved to approve B-3-2017.

Scott Spendlove seconded the motion.

**Discussion:** Scott Spendlove asked if the City owns the right of way to the property. Steve Lehman answered yes. Scott Spendlove asked if we know what type of landscaping will be installed on the property. Steve Leman said the owner will need a conditional use permit for the site. Staff will review the landscaping plan during the conditional use process.

Russell Moore asked if a sidewalk is required along Gates Avenue or Shuler Avenue. Steve Lehman answered that a sidewalk is only required on one side of the street for new improvements in the Manufacturing zone. We do not anticipate any improvements here for a long while.

Dave Dominguez said he is an excavator by trade. He has already hauled landscaping boulders onto the property. He plans to xeriscape the property with some swells, gravel, and landscape boulders. Necia Christensen thanked Dave Dominguez for the work he has put in towards improving the City.

Scott Spendlove asked if the variance only applies to the current owner. Steve Lehman answered that the variance runs with the land.

A roll call vote was taken:

Necia Christensen	Yes
Russell Moore	Yes
Scott Spendlove	Yes

**Motion Carries - B-1-2017 Approved – Unanimous**

**B-2-2017**

**Martin - Non Conforming Use Modification**

**3295 South Lehi Drive**

**REQUEST**

Mr. Jeff Martin is requesting a modification to an existing non-conforming building on property located at 3295 South Lehi Drive. Mr. Martin would like to remove the existing detached garage and replace it with a new structure that meets current ordinances and would be positioned farther from the existing property lines. However, the building would be slightly larger than what is there today.

**BACKGROUND**

The WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

The subject property is located at 3295 South Lehi Drive and is zoned R-1-6. The property is part of the Hillsdale Subdivision and is currently occupied with a single family dwelling and a detached garage.

According to the property owner, he would like to replace the existing 20-foot by 39-foot garage with a new garage that is 26-feet by 34-feet. The Board of Adjustment is involved as the structure is larger than the original building and is positioned on the property without meeting today's standards. The applicant explains in his letter that the new garage will replace an old garage that was not constructed well, is too close to the house and adjacent property lines, and does not meet current fire codes.

The existing single family dwelling is known as lot 118 in the Hillsdale Subdivision. This subdivision plat was recorded with the Salt Lake County Recorder's Office in 1953. Staff was able to locate an aerial photograph from 1972 which shows the dwelling and detached garage. As the garage was in existence prior to the City's incorporation, the need to determine its non-conforming status is not needed. However, the expansion of the footprint is needed.

In discussing this proposal with the applicant, staff advised him to contact the adjacent neighbors to see if they had any concerns with his proposal to build a bigger garage. Mr.

Martin did reach out to his neighbors and has submitted letters from these land owners expressing their approval for the new garage.

## **ORDINANCE SUMMARY**

Section 7-12-106(10) of the West Valley City Land Use Development and Management Act reads:

The Board may permit an enlargement or structural Alteration of a Nonconforming Building or Structure if the Nonconforming Building or Structure has been recognized by the Board or Zoning Administrator in accordance with this Title and if the applicant can prove by clear and convincing evidence the following:

The proposed change would not impose any unreasonable or detrimental impact on neighboring properties or Uses;

The proposed change is in harmony with the surrounding neighborhood; and

The proposed change would be consistent with the intent of the General Plan and this Title.

### **Applicant:**

Jeff and Charlotte Martin  
32954 South Lehi Drive  
West Valley City, UT 84119

**Public Comment:** Jeff Martin remarked that the existing garage on the property is dysfunctional and is falling down. The existing garage is too close to the house (2-3'). The new garage will be 5' away from the house and 5' away from the fence. Jeff Martin would like to build 10' sidewalls on the garage. The garage will match the house and will fit in with the neighborhood. The garage will be 26' wide to allow two cars inside. There is a pie shaped area behind the garage that will be covered with concrete to keep weeds down and make it usable.

Necia Christensen said the City has received two letters from neighbors in support of the new construction. Jeff Martin said his neighbors are happy about the planned improvement. Steve Lehman said he has heard from two additional neighbors in support of the garage replacement and expansion.

Necia Christensen closed the public comment portion of the meeting.

**Motion:** Scott Spendlove moved to approve B-2-2017.

Russell Moore seconded the motion.

**Discussion:** Scott Spendlove feels the new garage will be safer for and an asset to the surrounding neighborhood. Necia Christensen thanked the applicant for making the City better.

A roll call vote was taken:

Necia Christensen	Yes
Russell Moore	Yes
Scott Spendlove	Yes
William Whetstone	Yes

**Motion Carries - B-2-2017 Approved – Unanimous**

## **OTHER**

Approval of January 4, 2017 Minutes – **Approved**

There being no further business, the meeting adjourned at 6:38 p.m.

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Brenda Turnblom, Administrative Assistant